

REMARKS

Claims 19-26, 27-30 and 31-35 are pending. Claims 19-26 are allowed; Claims 27-30 have been amended to indicate that the claimed plants, cells and seeds comprise the polynucleotide sequence of Claim 19. As discussed, Claims 31-35 are directed to fragments of SEQ ID NO: 1 which comprises the active promoter. Support for these claims is found in the specification at page 4, lines 15-21. Accordingly, favorable consideration of this amendment and allowance of these claims is now respectfully requested.

The Applicants thank Examiner Collins for the courteous and helpful discussion of April 22, 2004. It was indicated that Claims 27-30 would be allowable if they were amended to indicate that the claimed products comprise the polynucleotide of Claim 19. These claims have now been so amended.

The Applicants also requested consideration of claims directed to fragments of SEQ ID NO: 1 (a longer nucleic acid sequence of which SEQ ID NO: 2 is a fragment) which retained promoter activity. It was pointed out that the specification describes such fragments on page 4, lines 15-21, and provides an assay for promoter activity starting on page 21, line 2. The Applicants submit that no undue experimentation would be required to make and use fragments of SEQ ID NO: 1 which retain the active promoter activity. New Claim 31 is directed to such fragments which have a promoter function "characterized by an ability to direct an RNA polymerase to initiate transcription". This promoter function is disclosed at page 1, lines 12-16, of the specification. Claims 31-35 are directed to such fragments retaining promoter activity. Favorable consideration and allowance of these claims is also respectfully requested.

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Rejection—35 U.S.C. § 112, second paragraph

Claims 27-30 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

This rejection is moot in view of the amendment of these claims.

Rejection—35 U.S.C. § 102

Claims 27-30 were rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez,  
U.S. Patent No. 5,888,789. This rejection is moot in view of the amendment of these claims.

CONCLUSION

In view of the above amendments and remarks, the Applicants respectfully submit that  
this application is now in condition for allowance. Early notification to that effect is earnestly  
solicited.

Respectfully submitted,

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